IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 141 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAGNABEN M PATEL

Versus

DIST. PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 141 of 2003

MR MUKESH R SHAH for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

MR DABHI, Ld. AGP for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 10/02/2003

ORAL JUDGEMENT

1. Rule. Mr.Munshaw, learned Counsel appearing for

respondent No.1, waives service of notice of rule and Mr.Dabhi, learned AGP waives service of notice of rule on behalf of respondent No.2.

2. The only question involved in this petition is that whether it is required for respondent No.1 authority to forward the communication of placement in the merit list and thereby to call for interview by "Registered A.D. Post" or forwarding of the communication by "U.P.C." is sufficient.

3. The short facts of the case are that the advertisement was published for filling up of the post of "Vidya Sahayaks" on 10-7-2002, inviting application from the interested candidates. The petitioner applied, as per the say of the petitioner, on 20th July, 2002 together with the necessary certificates for the post in question and the application of the petitioner was registered as at Sr. No.254. The respondent prepared the merit list on the basis of application received pursuant to the advertisement and the case of the petitioner is that she was placed at Sr. No.103 and she was expecting the interview call. However, she did not receive the same and on enquiry, the petitioner came to know that the select-list is already prepared. On further enquiry, the petitioner was orally told that the communication was forwarded through "U.P.C." and the petitioner did not remain present and, therefore, her name is excluded from the select-list. It is under theses circumstances the present petition.

4. The contention raised on behalf of the petitioner is that she has not received the communication for interview and, therefore, she could not be expected to remain present before the Selection Committee. It has been submitted that the name of the petitioner is, as per the merit list, at Sr. No.103 and, therefore, since the petitioner did not receive the interview call an enquiry was made by the petitioner and it is found by the petitioner that her name is excluded from the select-list. It has been submitted that since the petitioner is even otherwise also eligible for the interview and for placement in the merit list after the verification of necessary details by the Selection Committee, the respondents should be directed to consider the case of the petitioner by appropriate directions.

5. On behalf of the respondents, Dr.C.S.Chauhan, respondent No.1 has filed the affidavit-in-reply contending, inter alia, that it is the practice of the District Panchayat to forward the interview call letter

by U.P.C. and they had forwarded the interview call letters through U.P.C., but since certain candidates including the petitioner herein did not remain present at the time of interview, the select-list is finalised and the name of the petitioner is excluded from the select-list. It has been submitted on behalf of respondent No.1 by Mr.Munshaw that if respondent No.1 undertakes the procedure for communication by registered post, it will be a very lengthy procedure and it may also result into heavy expenses to the Panchayat and, therefore, U.P.C. is very practicable mode and the said mode was adopted by respondent No.1. Mr.Munshaw submitted that when the petitioner did not remain present at the time of interview, no fault can be there of respondent No.1. It has been submitted by Mr.Munshaw that while forwarding the explanation to the Director of Primary Education as per the letter dated 4-12-2002, it has been reported that the date of interview was also declared by the press note in daily newspapers and certain candidates, who had not received the interview call, had also remained present and, therefore, it has been submitted that no fault can be found with respondent No.1.

6. On behalf of the State Government, Mr.Dabhi, learned AGP has no material to show to this Court that whether the communication is required to be made by Registered A.D. post or U.P.C. or simple post to the candidates, who stood in the merit for inclusion in the select-list for appointment of Vidya Sahayak.

7. Having considered the above, before I consider the other aspects of the matter, it is necessary to deal with the last contention raised by Mr.Munshaw that the intimation was given in the daily newspapers also. The perusal of the communication dated 4-12-2002, copy whereof is produced at Annexure "D", shows that it has not been mentioned in the said communication regarding the day on which the press note was given, nor the names of the daily newspapers also disclosed. Further, how many candidates and who remained present in spite of non-receipt of the interview call, are also not mentioned and, therefore, prima facie the explanation submitted is not inspiring any confidence and, therefore, cannot be accepted.

8. Apart from that, there is no dispute on the point that the petitioner stood on merit at Sr. No.103 for the purpose of interview, which was to be held for preparing the select-list for the post in question. It appears that merely because the procedure of communication by

U.P.C. was adopted, the petitioner is deprived of the opportunity to appear in the interview and as a result thereof the petitioner could not remain present and her name is excluded from the select-list. It is true that normally when the mode of communication is not provided, it may be left to the wisdom of the authority to decide as to whether the communication should be forwarded by ordinary post, U.P.C., or by Registered A.D. However, I am of the view that if the first two modes namely; ordinary post or U.P.C. are accepted as the mode for communication, in all types of selection procedure, it may leave room for manipulation and malpractices in as much as, so far as the U.P.C. and ordinary posts are concerned, there is no proof of delivery and, therefore, the rights to be considered for the employment can seriously be prejudiced to the meritorious candidates awaiting public employments. At the same time, Mr.Munshaw is right in contending that if the communication is forwarded in all cases by Registered A.D. post, the Department or the Panchayat, as the case may be, will have to bear heavy burden of expenses. In my view, in such types of matters normally it is expected from the Department concerned to recover the amount of Registered A.D. charge from the candidates concerned together with the application, but if the mode of Registered A.D. is undertaken for communication to the meritorious candidates, who are eligible to be included, the same would be a more safe and wise course and would serve the better purpose of offering public employment to meritorious candidates.

9. In the present case, the say of the petitioner is that she has not received the communication, whereas the say of the District Panchayat is that the communication was forwarded, but it is not disputed by the Panchayat that the petitioner is standing on merit at Sr. No.103 and she was eligible to be considered at the time of interview to be included in the select-list. Had the petitioner no intention to appear for the interview, possibly the petitioner would not have approached the higher authority for such purpose by making application/complaint. More over, when the communication is forwarded by the authority to the candidates, the Department or the Panchayat, as the case may be, is expected to act with more responsibility and, therefore, it is expected that when the complaints are made, it should be properly verified as to whether the communication is received by the concerned candidate or not and, therefore, as observed earlier, it is in the larger interests that such communications are addressed through Registered A.D. Post. So far as the present

case is concerned, since the petitioner is even otherwise also eligible on merit, with a view to see that the meritorious persons may not be deprived of the opportunity merely on account of some lapse on the part of the Postal Department, I find it proper to give directions to respondent No.1 to undertake the interview of the petitioner and to place the petitioner in the select-list in accordance with the merit, which may be ultimately secured by the petitioner after the interview. In my view, even otherwise also no prejudice will be caused to any other candidates, who are less meritorious and since the whole matter is at the stage of select-list and finalization thereof.

10. In view of the aforesaid discussion, I find that the following directions would meet with the ends of justice:

10.1 Respondent No.1 shall communicate to the petitioner the date and time of interview to be held before the Selection Committee by "Registered A.D. Post".

10.2 The petitioner shall positively remain present before the Selection Committee as per the aforesaid interview call.

10.3 The Selection Committee shall examine all other aspects of the case and shall place the petitioner in the select-list in accordance with the merit.

10.4 The aforesaid exercise of calling for the interview and the selection process would be completed within a period of ten weeks from the date of receipt of the order of this Court.

11. Before parting with, I find it proper to observe that it shall be for the Director of Primary Education, respondent No.2 herein to look into the matter and to issue necessary directions to the concerned authority to forward communication to all the candidates by Registered A.D. post and he may also accordingly consider and instruct for allowing the authority to collect the charges of Registered A.D. Post from the candidates concerned. I find that such direction, if issued, would be in the larger interests of all meritorious candidates, who are awaiting employment and if such communication is made by Registered A.D. post, it will leave room for no manipulation or frustrating the rights of eligible candidates. It is hoped that the Director of Primary

Education shall look the matter positively and issue necessary instructions within a reasonable time and shall forward the compliance within a period of three months from the date of receipt of the order of this Court.

12. The petition shall stand allowed in terms of the aforesaid directions. Rule made absolute accordingly. No costs.

13-2-2003 (Jayant Patel, J.)

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